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09/864,809	05/24/2001	Gerard Jay Bellasalma	60137-026	2588

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CARLSON, GASKEY & OLDS, P.C.
400 WEST MAPLE ROAD
SUITE 350
BIRMINGHAM, MI 48009

EXAMINER

ART UNIT

PAPER NUMBER

DATE MAILED: 10/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliance
With 37 CFR 1.192(c)**

Application No.

09/864,809

Applicant(s)

BELLASALMA ET AL.

Examiner

David L. Sorkin

Art Unit

1723

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 03 September 2003 is defective for failure to comply with one or more provisions of 37 CFR 1.192(c). See MPEP § 1206.

To avoid dismissal of the appeal, applicant must file IN TRIPLICATE a complete new brief in compliance with 37 CFR 1.192(c) within the longest of any of the following three **TIME PERIODS**: (1) **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer; (2) **TWO MONTHS** from the date of the notice of appeal; or (3) within the period for reply to the action from which this appeal was taken. **EXTENSIONS OF THESE TIME PERIODS MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 1.192(c), or the items are not under the proper heading or in the proper order.
2. ☒ The brief does not contain a statement of the status of all claims, pending or cancelled, or does not identify the appealed claims (37 CFR 1.192(c)(3)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 1.192(c)(4)).
4. ☐ The brief does not contain a concise explanation of the claimed invention, referring to the specification by page and line number and to the drawing, if any, by reference characters (37 CFR 1.192(c)(5)).
5. ☐ The brief does not contain a concise statement of the issues presented for review (37 CFR 1.192(c)(6)).
6. ☒ A single ground of rejection has been applied to two or more claims in this application, and
 - (a) ☐ the brief omits the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet presents arguments in support thereof in the argument section of the brief.
 - (b) ☒ the brief includes the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief.
7. ☒ The brief does not present an argument under a separate heading for each issue on appeal (37 CFR 1.192(c)(8)).
8. ☒ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 1.192(c)(9)).
9. ☒ Other (including any explanation in support of the above items):

see Detailed Action

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DETAILED ACTION

1. 37 CFR 1.192(c)(3) requires "A statement of the status of all the claims, pending or canceled, and identifying the claims appealed". Appellant has not complied with 37 CFR 1.192(c)(3) in the following two aspects:

a. Appellant has not stated "the status of all the claims, pending or canceled" as required. The status of claims 23-25 is not discussed.

b. Appellant has not stated what claims are appealed.

2. Regarding 37 CFR 1.192(c)(7), the grouping of claims appellant provides is self-contradictory for the following reasons:

a. It first states "claims 2-12, 14, 26 and 30 all stand or fall together with independent claim 1", but later states "claim 2 stands or falls alone".

b. It first states "claims 2-12, 14, 26 and 30 all stand or fall together with independent claim 1", but later states "claim 3 stands or falls alone".

c. It first states "claims 2-12, 14, 26 and 30 all stand or fall together with independent claim 1", then reiterates that "claims 4-12, 14, 26 and 30 all stand or fall together with independent claim 1", but later states "claim 11 stands or falls alone".

d. It first states "Dependent claims 18-22, 27-29 and 31 depend from independent claim 17" (which contradicts the claim appendix), then states "Claim 17 and its dependent claims stand or fall together with claim 1", but later states "claim 18 stands or falls alone".

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e. It first states "Dependent claims 18-22, 27-29 and 31 depend from independent claim 17" (which contradicts the claim appendix), then states "Claim 17 and its dependent claims stand or fall together with claim 1", but later states "claim 19 stands or falls alone".

f. It first states "Dependent claims 18-22, 27-29 and 31 depend from independent claim 17" (which contradicts the claim appendix), then states "Claim 17 and its dependent claims stand or fall together with claim 1", but later states "claim 22 stands or falls alone".

g. It first states "Dependent claims 20-22, 27-29 and 31 all stand or fall together", but later states "claim 22 stands or falls alone".

h. It lists claims "1-12, 14, 26 and 30" in group "A" and claims "17-22, 27-29 and 31" in group "B", but states "Claim 17 and its dependent claims stand or fall together with claim 1".

i. It lists claims "1-12, 14, 26 and 30" in group "A" and claims "17-22, 27-29 and 31" in group "B", but states "Dependent claims 20-22, 27-29 and 31 all stand or fall together with claim 10."

Additionally, 37 CFR 1.192(c)(7) begins "For each ground of rejection which appellant contests..."; therefore, appellant should explain how any claim groupings relate to the individual issues. Particularly, regarding the section 112, second paragraph issue, because only claims 27 and 29 are rejected on this basis, at least one of these claims must be selected by the Board for the section 112, second paragraph issue. Also, appellant fails to group claims 13, 15 and 16.

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3. Although it is quite unclear what the groups are as explained above, as best understood Appellant fails to separately argue the groupings as required by 37 CFR 1.192(c)(7). According to appellant's arguments, it appears that for the section 112, first paragraph issue all claims stand or fall together. Although claims 11 and 22 are mentioned separately from the others (but not from each other), no additional reasons for patentability are argued. According to appellant's arguments, it appears that for the section 112, second paragraph issue the two rejected claims, 27 and 29, stand or fall together. According to appellant's arguments, it appears that for the section 102 rejection as anticipated by Larsen (US 1,196,121), there are three separately argued groups: a. claims 1, 4-7, 17, 26, 28, 30 and 31; b. claims 2 and 18; and c. claims 3 and 19. According to appellant's arguments, it appears that for the section 102 rejection as anticipated by Paulson (US 887,120), there are three separately argued groups: a. claims 1, 4, 5, 7-17, 20, 21, 26, 28, 30 and 31; b. claims 2 and 18; and c. claims 3 and 19.

4. 37 CFR 1.192(c)(8) states "Each issue should be treated under a separate heading". The rejections as anticipated by Larsen (US 1,196,121) should be treated under a separate heading from the rejections as anticipated by Paulson (US 887,120), rather than switching back and forth between these issues.

5. 37 CFR 1.192(c)(9) requires an "appendix containing a copy of the claims involved in the appeal". While appellant has not stated what claims are being appealed, as discussed above, the appendix omits claims 13 and 15. Appellant must include these claims in the appendix or clearly state that these claims are not being appealed.

Conclusion

Appellant is required to comply with provisions of 37 CFR 1.192(c).

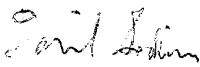
To avoid dismissal of the appeal, Appellant must comply with the provisions of 37 CFR 1.192(c) within the longest of any of the following TIME PERIODS: (1) ONE MONTH or THIRTY DAYS, whichever is longer, from the mailing of this communication; (2) within the time period for reply to the action from which appeal has been taken; or (3) within two months from the date of the notice of appeal under 37 CFR 1.191.

Extensions of these time periods may be granted under 37 CFR 1.136.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 703-308-1121. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 703-308-0457. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


David Sorkin



CHARLES E. COOLEY
PRIMARY EXAMINER